IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16258 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SONI KISHOREKUMAR KANJIBHAI

Versus

CHARIMAN

Appearance:

1. Special Civil Application No. 16258 of 2003

MR NALIN K THAKKER for Petitioner No. 1

MR NIKHILESH J SHAH for Respondent No. 1

MR SN SHELAT, A.G with MS MAITHILI MEHTA, A.G.P for Respondents Nos. 2-3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 02/09/2004

ORAL JUDGEMENT

1. RULE. Service of rule is waived by learned advocate Shri N.J. Shah for respondent no.1 and by learned A.G.P. Ms Maithili Mehta for respondents nos. 2 and 3. At the request of the learned advocates, the petition is finally heard today.

2. The petitioner, a resident of Anjar, has been aggrieved due to reconstitution of a plot of land admeasuring 32.74 sq meters, which belonged to him. The said plot being Survey No. 351 was denoted as original plot no. 22 in pursuance of Town Planning Scheme No. 4 of Anjar, which was made under the provisions of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as "the Act"). The petitioner has prayed in this petition that the petitioner should be allotted a Final Plot at the place, where his original plot was situated.

3. The facts giving rise to the present petition, in a nutshell, are as under:

4. The petitioner had purchased the land bearing Survey No. 351 admeasuring 32.74 sq meters from late Manjulaben Shah on 18th September, 1982. It appears that possession of the property was given to the petitioner immediately but necessary mutation entry in the revenue record was made on 1st June, 2002 and the entry with regard to sale of the said plot in favour of the petitioner was certified on 5th July, 2002 as can be seen from Annexure-A, an extract of the property register.

5. As stated hereinabove, the said plot was denoted as original plot no. 22 in pursuance of the scheme, and ultimately, Final Plot No. 22, admeasuring 32.74 sq meters situated at another place, had been allotted to the petitioner. It is not in dispute that late Manjulaben, from whom the petitioner had purchased the property, expired on 12th January, 2000. It is also not in dispute that though the property was purchased by the petitioner in September, 1982 and late Manjulaben had expired on 12th January, 2000, the property continued to remain in the name of late Manjulaben till 1st June, 2002.

6. The draft town planning scheme made by respondent no. 1 was given due publicity by advertising the same in the daily newspapers, as it can be seen from pages 41, 42 and 45 annexed to the affidavit-in reply filed on behalf of respondent no. 1. In addition to publication in the daily newspapers, it was also published in the Gujarat

Government Gazette dated 27th May, 2002. Inspite of the wide publication given to the draft scheme, the petitioner did not raise any objection with regard to reconstitution of his Final Plot No. 22. As there was no objection with regard to reconstitution of the said plot, there was no question with regard to considering any objection and, ultimately, the said draft town planning scheme had been sanctioned by the government under the provisions of Section 48 of the Act on 17th July, 2002.

7. Thereafter, the preliminary scheme had been made and the said preliminary scheme had also been given due publicity by the Town Planning Officer. Though, it was not mandatory, intimation with regard to preliminary scheme had been sent to the affected individuals by the concerned Town Planning Officer. As stated hereinabove, name of late Manjulaben Shah appeared in the revenue record before 1st June, 2002, and as the said record had been considered by the respondent authorities, when the draft scheme had been prepared, notices dated 16th August, 2002, 12th October, 2002, 20th December, 2003 and 3rd March, 2003 had been sent in the name of Manjulaben Shah, whose name had been shown in the revenue record and from whom the petitioner had purchased the property somewhere in 1982. It is the case of the petitioner that as the notices had been addressed to Majulaben Shah, the petitioner never received any notice, and, therefore, he could not know anything about reconstitution of his plot. It has been submitted by learned advocate Shri Nalin Thakkar that if such notices had been given to the petitioner, the petitioner would have surely raised an objection because, by virtue of reconstitution of his plot, the petitioner was shifted to a place, which is approximately half a kilometer away from the place where his original plot is situated.

8. As no objection had been raised by anybody in relation to Final Plot No. 22, ultimately, the preliminary scheme had been sanctioned by the State of Gujarat under the provisions of Section 65 of the Act on 21st January, 2003. When the petitioner came to know that he had been shifted to a different place, according to him, he had approached offices of the concerned Officers and had procured copies of the notices issued by the concerned authorities to late Majulaben Shah. The said notices have been annexed to the petition.

9. Learned advocate Shri Nalin Thakkar appearing for the petitioner has submitted that the said reconstitution is bad in law because no notice was ever given to the

petitioner in relation to reconstitution of his plot. It has been submitted that all the notices had been issued to late Majulaben Shah, who had expired on 12th January, 2000.

10. Thereafter, it has been submitted by the learned advocate that there was no justifiable reason for respondent no. 1 to allot Final Plot to the petitioner at a distant place. It has been submitted by him that normally, when a citizen is having his super structure on a particular plot of land, he is allotted the same plot as Final Plot, instead of shifting him to a different place. In the instant case, by shifting the petitioner to a different place, the petitioner has not only been sent away from the place where he has stayed for years, but he has been also made to suffer loss because the petitioner would be loosing the super structure, which he had purchased, from late Manjulaben Shah. It has been submitted by him that there is no justifiable reason for shifting the petitioner to a distant place.

11. It has been further submitted by him that even the place where he has been given the Final Plot, is away from the city. It is a place where formerly a jail had been constructed and the said area is quite underdeveloped. Due to the said reasons, the petitioner would be put to difficulties, if he has to settle at the Final Plot allotted to him.

12. The learned advocate has submitted that even if the petitioner is shifted to a different place, he should have been allotted Final Plot in the same area or in the vicinity, where his original plot is situated. It has been very fairly submitted by him that even if the Final Plot allotted to him is in the same area and it is smaller than the original plot, the petitioner would not make any grievance subject to his right to get compensation under the provisions of the Act.

13. On the other hand learned Advocate General Shri S.N. Shelat, with learned A.G.P. Ms Maithili Mehta, and learned advocate Shri N.J. Shah have appeared for the respondents.

14. It is the case of the respondents that though due publicity was given to the draft town planning scheme as well as the preliminary town planning scheme, the petitioner did not respond to the advertisements and did not make any effort to approach the authority for knowing as to which Final Plot was to be allotted to him. According to the respondents, upon wide publicity being

given to the aforestated scheme, the petitioner ought to have approached respondent no. 1 or respondent no. 2 at the relevant time with his grievance. Had he done so, the concerned authorities would have looked into the grievance of the petitioner and would have surely helped him or would have given the reasons as to why the petitioner was shifted to a different place and as to why it was not possible to allot Final Plot to him at the place, where his original plot is situated.

15. It has been submitted on behalf of the respondents that according to the provisions of the Act and the Rules made thereunder, there is no provision with regard to giving any individual notice to anybody. Inspite of the said fact, so as to render some assistance to the affected citizens, it is a practice to issue notices to them. For the purpose of ascertaining the names of the owners of the property, normally revenue record is looked into at the time when the draft scheme is prepared. At the time when the revenue record of the properties, which were subject matter of the scheme, had been examined by respondent no. 1 authority, it was found that the land bearing city survey no. 351 was in the name of Munjulaben Shah and, therefore, respondents nos. 1 and 2 had made a note to the effect that the said property belonged to Manjulaben Shah. Accordingly, at the time when notices were issued, they were issued to Manjulaben Shah, who had in fact expired on 12th January, 2000, but the said fact was not within the knowledge of the respondent authorities as the respondent authorities were never informed about the said fact and more particularly when the property in question continued to be in the name of Manjulaben Shah.

16. It has been submitted by the respondent authorities that upon publication of the advertisement, the petitioner ought to have consulted respondents nos. 1 or 2 at the relevant time, and by not doing so, the petitioner had remained indolent and, therefore, the respondent authorities cannot be blamed for the petitioner's ignorance or inaction.

17. Thus, it has been submitted on behalf of the respondents that it was not possible to give personal intimation to the petitioner with regard to reconstitution of his plot in the aforestated circumstances and it was also not obligatory on their part to do the same and, therefore, the petitioner cannot have any legitimate grievance with regard to non-receipt of any notice. It has been submitted on behalf of the respondents that looking to the peculiar facts of the

case, it was not possible to accommodate the petitioner by allotting Final Plot at the same place because a portion of the petitioner's building was becoming part of a road in the process of road widening. It has been therefore submitted that so as to give sufficient area of land, which the petitioner owned earlier, the petitioner had to be shifted to a distant place.

18. I have heard the learned advocates and have perused the pleadings and the maps, which were shown in the Court.

19. Upon perusal of the record and upon hearing the learned advocates, it is clear that the petitioner had no right to get any special notice. It is deplorable that the name of the petitioner was not mutated in the revenue record and, therefore, the respondent authorities could not send any communication to the petitioner. Though the name of the petitioner was mutated on 1st June, 2002, the said entry had been certified on 5th July, 2002. Though, it appears that the name of the petitioner had been entered in the revenue record just some time before the draft scheme had been sanctioned, it cannot be said that there was fault on the part of respondent authorities because the name of the petitioner had been entered in the revenue record in June, 2002 though the property in question was purchased by the petitioner on 18th September, 1982. Moreover, information from the revenue record was collected sometime before the petitioners name was shown in the revenue record. In not getting the revenue record updated in time, one cannot find any fault with the respondent authorities.

20. Looking to the aforesaid facts, it cannot be said that the petitioner's rights has been violated. In fact, upon advertisements regarding the draft and preliminary schemes being published, the petitioner should have approached the concerned authorities but for the reasons best known to him, he did not do so.

21. Looking to the facts of the case, it appears that the petitioner could have been accommodated at the place near his original plot if he had got an opportunity to represent his case because at that time the preliminary scheme had not been finalised.

22. Looking to the aforestated facts, in my opinion, the petitioner can be helped by permitting him to submit an application praying for variation of the scheme so far as his Final Plot is concerned. If such an application is submitted by the petitioner to respondent no.1, I am

sure that respondent no. 1 will make an effort, if possible, to allot Final Plot to the petitioner near the area, where his original plot is situated so that the petitioner can be shifted to a place, which is not far from his original place. The petitioner has submitted that he had selected his original plot while purchasing the same from late Manjulaben Shah as the petitioner belongs to a particular community and many persons belonging to his community were residing in the said locality. According to the petitioner, Final Plot no. 22 is in a locality, where persons belonging to his community are very few. I am sure that if it is possible, respondent no. 1 shall consider the petitioner's case and shall forward the application praying for variation, which might be submitted by the petitioner alongwith its remarks to the respondent government so that if possible, the scheme can be varied and a plot, which might be near to his original plot, can be allotted to him. It may be noted here that the petitioner has submitted that even if the Final Plot, which may be offered to the petitioner is smaller than his original plot, he would accept it subject to his right to get compensation under the provisions of the Act, if he is offered the plot in the vicinity of his original plot. The petitioner shall submit an application within one month form today and if such an application is received, by respondent no. 1 alongwith its report, respondent no. 1 shall forward the same to the State of Gujarat and upon perusal of the application and the report of respondent no. 1, the State of Gujarat shall do the needful in accordance with law at an early date.

23. In the circumstances, the petition stands disposed of as allowed to the above extent only. Rule is made absolute with no order as to costs.

(A.R. DAVE, J.)

siji